

JUN 04 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By: *J. White* Deputy Clerk

JULIUS CALDWELL,)
Plaintiff,)
v.)
ICEE OF ATLANTA, INC. and)
KENT WATKINS,)
Defendants.)

1:10 CV - 1719
Civil Action No: _____

JOE

COMPLAINT

COMES NOW Plaintiff Julius Caldwell ("Plaintiff"), by and through his undersigned counsel, and files this Complaint against Defendant ICEE of Atlanta, Inc. ("ICEE") and Defendant Kent Watkins ("Watkins") (collectively "Defendants").

PARTIES

1. Plaintiff is an individual, resident / citizen of the State of Georgia and resides at 248 Herrell Road, Villa Rica, Georgia 30180.
2. ICEE is a company organized under the laws of the State of Georgia with its principal place of business located at 1155 Allgood Road, Suite 4, Marietta, Georgia 30062.

3. ICEE may be served via its registered agent for service of process – Larry Chesin, 26th Floor, 75 14th Street, Atlanta, Georgia 30309.

4. Watkins is an individual and, upon information and belief, is a resident / citizen of the State of Georgia and resides within the Northern District of Georgia.

5. Watkins is ICEE's CEO, CFO and, upon information and belief, the owner of ICEE, sole shareholder of any and all of ICEE's issued / outstanding shares of stock and/or majority shareholder of any and all of ICEE's issued / outstanding shares of stock.

6. Watkins may be served at 1155 Allgood Road, Suite 4, Marietta, Georgia 30062.

JURISDICTION

7. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over Plaintiffs' Complaint for violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

VENUE

8. Venue is proper in this district and division pursuant to 28 U.S.C. § 1331(b)(1) because ICEE resides in the State of Georgia and within the Northern

District of Georgia, and, upon information and belief, Watkins resides in the State of Georgia and within the Northern District of Georgia.

9. Venue is also proper in this district and division pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events / omissions giving rise to Plaintiff's Complaint occurred within the Northern District of Georgia and/or a substantial part of the property at issue in Plaintiff's Complaint is situated in the Northern District of Georgia.

FACTUAL BACKGROUND

10. In or around the early 2000s, Plaintiff was hired by ICEE.
11. In or around March 2009, Plaintiff's employment with ICEE ended.
12. Throughout Plaintiff's employment with ICEE, ICEE regularly suffered or permitted Plaintiff to work in excess of forty hours per workweek.
13. Throughout Plaintiff's employment with ICEE, ICEE repeatedly and willfully failed and refused to pay Plaintiff one and one half times his regular rate for hours he worked in excess of forty hours per workweek in violation of the FLSA.
14. Throughout Plaintiff's employment with ICEE, ICEE willfully misclassified Plaintiff as being exempt from overtime in violation of the FLSA.

COUNT / CLAIM

FLSA Overtime Violation

15. Plaintiff realleges and incorporates as if fully set forth herein the allegations set forth in all of the above paragraphs.

16. At all relevant times, Watkins was ICEE's CEO, CFO and, upon information and belief, the owner of ICEE, sole shareholder of any and all of ICEE's issued / outstanding shares of stock and/or majority shareholder of any and all of ICEE's issued / outstanding shares of stock.

17. At all relevant times, Watkins acted directly in the interest of ICEE in relation to Plaintiff as defined by the FLSA.

18. At all relevant times, Defendants were Plaintiff's employers as defined by the FLSA.

19. At all relevant times, Plaintiff was an employee of Defendants as defined by the FLSA.

20. At all relevant times, Defendants were subject to the overtime provisions of the FLSA.

21. At all relevant times, Plaintiff was not exempt from being entitled to overtime pursuant to the FLSA.

22. Throughout Plaintiff's employment with Defendants, Defendants regularly suffered or permitted Plaintiff to work in excess of forty hours per workweek.

23. Throughout Plaintiff's employment with Defendants, Defendants repeatedly and willfully failed and refused to pay Plaintiff one and one half times his regular rate for hours he worked in excess of forty hours per workweek in violation of the FLSA.

24. Throughout Plaintiff's employment with Defendants, Defendants willfully misclassified Plaintiff as being exempt from overtime in violation of the FLSA.

25. Watkins may be held individually / personally liable along with ICEE for violating the overtime provisions of the FLSA.

26. As a result of Defendants' violation of the FLSA, Plaintiff has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) That judgment be entered in his favor and against Defendants;

- (b) That he be awarded all of his unpaid overtime wages pursuant to the FLSA;
- (c) That he be awarded liquidated damages in an amount equal to all of his unpaid overtime wages pursuant to the FLSA;
- (d) That he be awarded all of his attorney's fees, costs and litigation expenses pursuant to the FLSA;
- (e) That he be awarded any and all other and further relief as the Court deems just, proper and/or appropriate.

JURY TRIAL DEMANDED

Respectfully submitted this 4th day of June, 2010.



Preston B. Davis
Georgia Bar No. 141999
preston@pbdavislaw.com
Counsel for Plaintiff

LAW OFFICE OF PRESTON B. DAVIS, LLC
4488 S. Springwood Dr. SW
Smyrna, GA 30082
Telephone: (678) 372-2477
Facsimile: (678) 945-5080

Counsel for Plaintiff

CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, N.D. Ga., the undersigned counsel certifies that this document was prepared with Times New Roman (14 point), one of the font and point selections approved by the Court in Local Rule 5.1B, N.D. Ga.

Respectfully submitted this the 4th day of June, 2010.



Preston B. Davis
Georgia Bar No. 141999
preston@pbdavislaw.com
Counsel for Plaintiff

LAW OFFICE OF PRESTON B. DAVIS, LLC
4488 S. Springwood Dr. SW
Smyrna, GA 30082
Telephone: (678) 372-2477
Facsimile: (678) 945-5080

Counsel for Plaintiff